Public Utility Commission of Texas

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Pat Wood, III
Chairman

Robert W. Gee
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Judy Walsh
Commissioner

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of: Implementation of the Telecommunications Act of 1996 - Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; CC Docket No. 96-115

Dear Mr. Secretary:

Enclosed for filing are an original and eleven copies of the Public Utility Commission of Texas' Comments in response to CC Docket No. 96-115.

Thank you for your assistance.

Sincerely,

Jackie Follis
Senior Policy Analyst
Office of Regulatory Affairs

Enclosures

cc: Janice Myles, Common Carrier Bureau
International Transcription Services, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

7800 Shoal Creek Blvd.
Austin, Texas 78757
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June 5, 1996

EXECUTIVE SUMMARY

The Public Utility Commission of Texas supports the development of a comprehensive approach to privacy regulation. We believe that that privacy standards set out in our developing privacy rules can serve as a guideline to the Federal Communications Commission in developing national standards for all local exchange carriers in their treatment of customer proprietary network information. Specifically, the Public Utility Commission of Texas believes that telecommunications customers should be able to control the outflow of information about themselves, and that customer education is a critical component of an effective policy on privacy Privacy policies should facilitate customer choice, maintain current expectations of privacy until the customer "opts-in," and be applied fairly across service providers and services. We believe this is the policy objective implicit in the language of Section 222 of the Federal Telecommunications Act of 1996 and we support the Federal Communications Commission in this important rulemaking to implement the appropriate standards to carry out the policy.

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COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

I. INTRODUCTION

1. In response to inquiries from several local exchange carriers as to their responsibilities under the Telecommunications Act of 1996 ("the Act") regarding use and protection of customer proprietary network information ("CPNI"), the Federal Communications Commission ("FCC") has initiated this Notice of Proposed Rulemaking ("NPRM") to seek comment on proposed regulations on the matter. Specifically, the FCC

seeks comment on "regulations to specify in more detail and clarify the obligations of telecommunications carriers with respect to the use and protection of CPNI and other customer information." In this proceeding, the FCC proposes a regulatory regime that balances consumer privacy and competitive considerations to ensure that telecommunications carriers comply with their new statutory obligations to maintain the privacy of CPNI and other customer information.

2. Section 222 of the Act sets out certain restrictions on the use of CPNI by a telecommunications carrier for purposes other than the provisioning of the service from and for which the information was initially collected. The section also describes certain requirements related to subscriber list information and distinguishes such information from CPNI, and also sets out requirements regarding a telecommunications carrier's use and distribution of aggregate CPNI.

3. The FCC seeks comment on the following proposals and issues: 1) that regulations that interpret and specify in more detail a telecommunications carrier's obligations under Section 222 would be in the public interest; 2) that the pre-existing Computer Inquiry III ("CI-III") rules should continue to apply to AT&T, the BOCs, and GTE, in particular, whether there are privacy or competitive reasons for continuing to apply the CI-III requirements; 3) on the extent to which Section 222 permits states to

impose additional CPNI requirements; 4) the appropriate interpretation of the term "telecommunications services"; 5) whether both written and oral authorization are allowed, under what circumstances one form or the other would be appropriate, and how to obtain written authorization from the customer; 6) whether information regarding a customer's CPNI rights be included in a request for written authorization, and how detailed such information should be; 7) how often to notify customers of their CPNI rights, and how long the CPNI authorization will be valid; and, 8) whether local exchange companies should be required to notify other parties regarding the availability of aggregate CPNI, on a reasonable and nondiscriminatory basis prior to using such aggregate CPNI themselves.

II. THE PUCT'S RESPONSE TO THE PUBLIC INTEREST CONCERN AND THE CONTINUED APPLICABILITY OF PRE-EXISTING CI-III REQUIREMENTS

4. The Public Utility Commission of Texas ("PUCT") supports the FCC's position that regulations that interpret and specify in more detail a telecommunications carrier's obligations under Section 222 would be in the public interest. The PUCT has been heavily involved with privacy issues, and the CPNI issue in particular, for the past five years and is well aware of the confusion and inherent difficulties in implementing controls on customer information heretofore generally available for the carrier's use. In particular, residential CPNI has never been addressed specifically by the FCC in the Computer Inquiry

proceedings. Therefore since Section 222 will change entirely the manner in which all customer information is accessed and utilized by the carrier, clear guidance from the FCC and state regulators is of paramount importance

5. The PUCT believes that Section 222 provides a broad policy statement regarding an urgent need for controls on the access, use, and dissemination by a telecommunications carrier of the vast amounts of specific information pertaining to specific customers of the carrier. We believe that is incumbent upon the FCC to provide more detailed guidance for implementation of the CPNI provisions of the Act, but we also believe that the state has an interest in ensuring that intrastate telecommunications customers are adequately protected and would urge the FCC not to pre-empt the state from further honing the rules as necessary upon review of the FCC's final order in this matter.

6. CPNI restrictions currently in effect under the CI-III regulations require that all carriers, including the BOCs, obtain prior authorization from customers with more than 20 lines before using the CPNI to market enhanced services. Such authorization is obtained by written ballot. However, the carriers could access and use the CPNI of multi-line business customers with 2 to 20 lines without prior authorization, but were required to notify such customers of their option to restrict such usage. The FCC has tentatively concluded that, insofar as the current regulations do not conflict with Section 222, they

should remain in effect pending the outcome of this NPRM. The PUCT agrees that the current notification requirements do not supersede the prior-authorization requirements of Section 222, but believe that the notice to multi-line business customers with 2 to 20 lines must be modified to inform such customers that their CPNI is now restricted unless they authorize the carrier to use or disseminate it. The PUCT will discuss notice and customer education further in part VI of these comments

III. THE PUCT'S RESPONSE TO THE APPROPRIATE DEFINITION OF "TELECOMMUNICATIONS SERVICES"

7. The FCC has proposed dividing the term "telecommunications services" into three distinct categories: local (including short-haul toll); interexchange (including interstate, intrastate, and international long distance offerings, as well as short-haul toll); and commercial mobile radio services. The PUCT believes that the FCC has defined the term much too broadly for purposes of implementing Section 222 requirements. Section 222 uses the term "telecommunications services" to establish a boundary line to safeguard the customer's information on both the privacy and the competitive fronts. Clearly, if the only competition between carriers was conducted between the categories defined here by the FCC, the proposed definitions would suffice. However, competition occurs within each of these categories as well. For example: a local service such as voice mail could be provided by the customer's local exchange service carrier or by an independent voice mail company. The PUCT believes that Section 222 took into consideration the competitive

concerns arising out of the myriad choices customers now have to piece together their telecommunications services from a variety of sources, which is why Section 222(d)(3) of the Act provides for oral authorization for inbound tele-marketing calls. Under the FCCs proposed definition, the carrier could use the calling customer's CPNI to market any of their "local" services to that customer without any need for oral authorization at the time of the call; therefore such an exception would be unnecessary For this reason, the PUCT does not believe that the FCC's definition would adequately address the intent of the legislation to restrict the carrier's use of CPNI to the service from which it was obtained, since such "service" would be virtually anything the local company had to offer.

8. The PUCT believes that it was the intent of the Act to narrowly restrict the usage of CPNI to only that which is necessary to provide the customer with the exact services he has requested, and that the Act considered both the privacy of the customer and the concerns of competitors when setting out the restrictions regarding any additional use of the customer's information. We believe that the Act considered that the customer, having purchased the desired telecommunications services may not want to be continually bombarded with additional telemarketing calls from his carrier or any other vendor; and that competitors, who have the ability to provide additional telecommunications services to those customers, should not be unfairly disadvantaged by the carrier's in-house access to valuable marketing information.

9. The PUCT proposes that the term "telecommunications services" be interpreted to mean any distinct service or service package that a customer can purchase from the telecommunications carrier. The PUCT believes that the customer will assume that in order to receive the requested services from the carrier, the carrier will require certain information. The customer should then be safe in assuming that all such information provided to the carrier will be utilized for the initiation, provisioning, billing, etc. of, or necessary to, that service or those services. Any further use or dissemination of that customer's CPNI would then require either verbal or written authorization from the customer.

IV. THE PUCT'S RESPONSE TO THE APPROPRIATE INTERPRETATION OF THE PRE-AUTHORIZATION REQUIREMENTS

10. The FCC seeks comment on whether Section 222 (c)(1), which is silent on the form that customer authorization should take, allows for either written or oral authorization; particularly, in light of (c)(2), which specifically states that a "carrier shall disclose customer proprietary network information, upon affirmative written request by the customer." The PUCT finds that the specific language of (c)(1) does not foreclose either form of authorization, but urges the FCC to enact rules to require the carriers to obtain written authorization as they do currently for multi-line business customers with more than 20 lines. Written authorization, given after adequate education and notice to

the customer (see Part VI of these comments), is the only practical method for attempting to ensure that the customer: a) has been informed as to the amount and type of information that the carrier has collected about him; b) has been informed of his rights regarding the carrier's use and/or dissemination of such information; and, c) has made an informed decision to authorize the carrier to use or release such information to third parties.

11. In 1992, the PUCT adopted a rule that addressed, in part, placed restrictions on the carrier's use and dissemination of CPNI , and set out procedures for balloting residential customers for written authorization. This section of the rule, Substantive Rule §23.57(e), was overturned in United States District Court because the Court found it to be inconsistent with specific language in FCC rules regarding prior-authorization requirements (*Civil Action No. A-92-CA-270; Southwestern Bell Telephone Company v. Public Utility Commission of Texas*), however we believe the principles set forth in the PUCT's rule appropriately balance competitive and privacy concerns and therefore have included a copy of the former rule as it was adopted in 1992 to provide the FCC with an example of how a written prior-authorization requirement could function. In addition, the rule's specifications regarding specific information to be contained on the proposed prior-authorization ballot highlight the PUCT's concern for providing the customer with detailed information. The PUCT urges the FCC to carefully consider the need for all customers to make informed decisions regarding the use and dissemination of CPNI, and

adopt written authorization requirements for carrier access to all CPNI as is currently the case for multi-line business customers with more than 20 lines.

V. THE PUCT'S RESPONSE TO ISSUES PERTAINING TO AGGREGATE CPNI

12. The FCC seeks comments on whether local exchange companies should be required to notify other parties regarding the availability of aggregate CPNI, on a reasonable and nondiscriminatory basis prior to using such aggregate CPNI themselves. Current PUCT rules require that "if a telecommunications utility compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the telecommunications utility for marketing purposes, it must also provide aggregate CPNI to any third party upon request. A telecommunications utility must offer to provide aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the telecommunications utility . . . provided that the third party must specify the type and scope of the aggregate CPNI requested. A telecommunications utility must, upon request, provide such aggregate CPNI to a third party under any other alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory." The PUCT believes its current rules on aggregate CPNI are adequate and require sufficient accommodation on the part of the local exchange

carrier to address the needs of third party access to such information, and that it is not necessary to further burden the carrier with the responsibility of first identifying and then attempting to notify any potential users of such information that it is available before they can use it themselves.

VI. THE PUCT'S RESPONSE TO CUSTOMER EDUCATION AND NOTIFICATION REQUIREMENTS

13. Customer education and notification regarding CPNI is the most critical element in any effective consumer protection effort. It is imperative that the customer be informed of the amount, the type, the detail, and the variety of information that the carrier has collected about him, as well as how that information is used by the carrier, in order for that customer to make a well-informed decision regarding placing any restrictions on it. In former Substantive Rule §23.57(g), the PUCT required that the carrier send a ballot to each residential customer at least one time. This ballot would have detailed information regarding the customer's choices about the carrier's use of the information, what type of information could be released, and to whom such information could be released. Again, the PUCT urges the FCC to review these provisions in the attached former rule for guidance in developing notice requirements. Additionally, while the former rule provides for detailed information on the ballot, the PUCT believes that prior notification in the form of a letter or a bill insert to the customer prior to sending out the ballot, and again in

conjunction with sending out the ballot, would better ensure that the customer is adequately informed.

VII. CONCLUSION

The PUCT has consistently supported a policy on telecommunications customer privacy that allows the customer to make informed decisions regarding the use and dissemination of information about himself. This principle is at the heart of the PUCT's Telecommunications Privacy Rule, we believe it is the principle implicit in the language of Section 222 of the Federal Telecommunications Act of 1996, and it is the principle that guides us in urging the FCC to proceed with this rulemaking.

Respectfully submitted,

Pat Wood, III
Chairman

Robert W. Gee by ecw

Robert W. Gee
Commissioner

Judy Walsh
Commissioner

Public Utility Commission of Texas

7800 Shoal Creek Boulevard
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Marta Greytok
Commissioner

Paul D. Meek
Commissioner

Robert W. Gee
Chairman

TO: Commissioner Greytok
Commissioner Meek
Chairman Gee

FROM: Martin Wilson CMW
Deputy General Counsel

Jackie Follis
Telecommunications Policy Analyst

DATE: March 25, 1992

SUBJECT: April 1,1992 Final Order Meeting--Substantive
Rule 23.57, Telecommunications Privacy

Attached for your consideration is proposed Section 23.57, an addition to the Commission's Substantive Rules regarding Telecommunications Privacy. General Counsel and the Telephone Division recommend that the proposal be adopted.

The rule was considered at the October 2, 1991 Final Order Meeting and was published for comment in the *Texas Register* (16 TXReg 5763) on October 18, 1991. This rule is scheduled to expire on April 18, 1992.

Comments were received through November 18, 1991 and reply comments through December 17, 1991. The rule has been changed from the proposal submitted in October in consideration of specific comments as identified and summarized in the preamble to the rule. In addition, we have attached a comparison copy of the rule which highlights these changes.

Please feel free to contact us if we can be of further assistance.

The Public Utility Commission of Texas adopts new section §23.57, concerning telecommunications privacy issues. Section §23.57 is being adopted with changes to the proposed text published in the Texas Register on October 18, 1991 at 16 Tex. Reg. 5763.

The commission adopts §23.57 after finding that privacy issues are becoming increasingly relevant in the emerging advanced telecommunications infrastructure and that customers may be unaware of the extent of the accumulation and dissemination of customer information by local exchange carriers. Changes to the proposed rule affect every subsection and are generally in the nature of clarification of the rule's intent. These changes are explained in the summary of comments.

Martin Wilson, deputy general counsel, has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be that customer proprietary network information compiled by and available to local exchange carriers will be released under controlled circumstances, and that local exchange carriers will be required to identify and address privacy concerns before introducing any new service.

Comments were received for 30 days and reply comments for an additional 30 days. Parties commenting on the proposed rule were: the Texas Association of Telephone Answering Services, Inc. ("TATAS"), the Texas Telephone Association ("TTA"), Consumers Union, the Texas Gray Panthers, Central Telephone Company of Texas ("CENTEL"), the A.C.L.U. of Texas, the Office of Public Utility Counsel ("OPUC"), AT&T, GTE-Southwest Incorporated and Contel of Texas, Inc. ("GTE-SW"), Southwestern Bell Telephone Company ("SWBT"), United Telephone Company of

Texas, Inc., MCI Telecommunications Corporation, Crime Stoppers, the Texas Association Against Sexual Assault ("TAASA"), and the Texas Council on Family Violence. CENTEL's comments were in the form of a cover letter concurring with the comments submitted by TTA. Reply Comments were received from GTE-SW, US Sprint Communications Company Limited Partnership ("Sprint"), SWBT, and the Texas Department of Human Services ("DHS").

SWBT commented that the proposed telecommunications privacy rule is "untimely, unnecessary and detrimental to consumers" suggesting that the balloting requirements imposed by the CPNI provision of the rule would confuse customers and provide no incentive for LECs to offer new services. United commented that "it has not been demonstrated that LEC customers are concerned about treatment of CPNI by LECs." Inasmuch as privacy issues are becoming increasing relevant in the emerging advanced telecommunications infrastructure and that customers may be unaware of the accumulation and dissemination of customer information by the LECs, the commission finds that a rule addressing such concerns is both timely and necessary. Those provisions of the rule addressing balloting of customers provide a local exchange carrier with 180 days to compose a clear, concise ballot informing the customer of his options with respect to the release of his information. The comment regarding the LECs' lack of incentive to offer new services will be addressed below in the discussion on the CPNI provisions of the rule.

TTA and SWBT dispute the deputy general counsel's statement in the preamble to the proposed rule that "[t]here is no anticipated economic cost to persons who are required to comply with the section as proposed." TTA specifically claims "that anytime a ballot or bill insert is required, the cost of postage alone negates the statement." The

commission finds that, to the extent any economic cost has been identified for persons who are required to comply with the section as proposed, the public benefit resulting from such compliance outweighs the cost.

All of the LECs that commented stated that the definitions of "supplemental services" and "optional calling features or plans ('OCFPs')" were confusing and that the distinction between them was unclear. Further, the LECs commented that the provision of the proposed rule addressing OCFPs [subsection (b)(5)] would tie the LECs hands in marketing its own regulated monopoly services. TATAS commented that the definition of "supplemental services" should state that any service offered on an untarriffed basis by a local exchange carrier is a "supplemental service," and further that voice messaging services should be included in the definition as a "supplemental service." GTE-SW commented that "basic service," which is used in the definition of "supplemental services" is not defined and, therefore, the definition itself ambiguous. The commission agrees that said provisions on OCFPs is unnecessarily burdensome on the LECs' ability to market regulated monopoly services, therefore, all definitions and provisions of the rule addressing "optional calling features or plans" have been deleted. The intent of the distinction in the definitions between OCFPs and "supplemental services" was to clearly identify what services would constitute "supplemental services" for the purpose of releasing customer-specific CPNI for the use of local exchange carrier personnel marketing such "supplemental services." The definition of "supplemental services" is still necessary and relevant to the rule and remains in the rule; however, it has been revised in consideration of comments and to clarify the rule's intent.

The published version of the proposed rule referenced "current privacy expectations" in a general statement addressing customer privacy at subsection (a). Several commenters noted that "current privacy expectations" is an undefined term in need of definition. TTA commented that "current privacy expectations" is somewhat ambiguous and that the rule should be modified to clarify the standard and to allow for the standard to change. Similarly, OPUC and Consumers Union commented that the rule lacked standards and a definition for "current privacy expectations." Consumers Union stated that in lacking a definition for "current privacy expectations," there are no standards for the commission to use to determine whether the LEC is in compliance with the intent of the rule. OPUC suggested that the LECs may be able to alter the standard each time an application is approved. GTE-SW commented that the proposed rule "presumes that any loss of privacy is harmful" and that it also "assumes that the affected individual desires that the loss of privacy be restored." GTE-SW ventures on to state that "[i]n any free society, a reasonable balance must be drawn between the expectations of individuals and the overall benefits to society that result from some form of change. In some cases, the benefits to society may be sufficient to warrant the associated loss of individual privacy." The commission agrees that the reference to "current privacy expectations" is ambiguous has deleted that reference from the rule. The rule has been restructured so that subsection (a) is now **Definitions** and subsection (b) is now **Privacy Considerations.** The intent of the rule has been clarified by the addition of a definition for "privacy issue" [subsection (a)(4)], and subsections (c) sets forth factors for the commission to consider in determining the privacy issues in any LEC application to offer a new service or feature.

Subsection (c) of the proposed rule was clearly misinterpreted by commenters. Both industry and consumers groups alike stated that they interpreted the subsection on new

service applications to mean that a LEC would bring in an application, state what the LEC considered to be the privacy concerns with the new service - if any, - and that the application would then be approved. In particular, commenters stated that the proposed rule de facto approved caller identification services for the state. TTA stated that the rule "as rewritten would allow LECs the flexibility needed to offer Caller ID." Consumers Union stated that "[u]nder this rule, all the Commissioners can do is ensure that all subjective statements required (by the LECs) in the application have been filed. By adopting this rule the commission will completely abdicate its responsibility to the public on issues of privacy." The Texas Council on Family Violence stated that the rule "would allow the telephone company to determine its own approaches to creating a market for Caller ID. We believe the Public Utilities (sic) Commission must continue its involvement in this process." Proposed subsection (c) was intended merely as an information gathering tool to be utilized by the commission in reviewing all applications for new services or new features to existing services. The criteria set out in the subsection were not intended to be inclusive of the privacy issues the commission would examine, nor would the submission of an application listing such criteria guarantee commission approval of said application. The proposed rule is not intended to be a caller ID rule and was not drafted to preclude or endorse the introduction of such services in Texas, but rather to provide a mechanism for commission review of all applications for privacy issues. However, given the extent of comments on this subsection, the rule has been revised to clarify the review process for new services applications in subsection (b) and (c). These subsections provide for the LEC to list what it believes to be the privacy concerns, if any, in its application. Due to rapidly evolving telecommunications technologies, it is necessary for the commission to review each service application for privacy concerns on a case by case basis. Rather than set explicit standards for each new service application in order to meet concerns about

customer privacy, the rule, as clarified in revision, allows the commission the flexibility to examine the issues as technology develops and customer expectations change. The commission reserves the authority to deny or modify any new service application if it should determine that a relevant privacy issue has not been adequately resolved by the LEC.

Consumers Union also commented that the exception in the rule for "good cause" was a back door for the LECs to avoid addressing privacy concerns. They stated that non-subscribers to a service should never be "worse off" so that someone else can enjoy a service. Again, the commission has a responsibility to ensure that Texas enjoys the benefits of a developing telecommunications infrastructure. Each application must be examined individually to determine the applicable privacy concerns. The rule addresses "good cause" in order to allow a LEC to provide explanation for not restoring a loss degree of privacy - the commission determines whether "good cause" has been shown, however, not the LEC.

Consumers Union requested that the commission withdraw the rule and hold the "promised workshops" to examine privacy issues. They suggested that the commission invite balancing interests such as "battered women's shelters, hotlines, law enforcement, etc." OPUC called for "full evidentiary hearings" before adopting any rule on privacy in order to fully examine all the issues. The commission held a workshop in May of 1991 to examine privacy issues and, in addition to the industry, invited a host of balancing interests, including battered women's shelters, hotlines, law enforcement and the Consumers Union. Virtually no parties other than the industry attended the workshop, therefore, the commission did not hold subsequent workshops on the issue. In the event a LEC application to offer new services is docketed, the

commission will hold full evidentiary hearings as required and, thereby, provide for a focused examination of the issues as they arise on a case by case basis.

Commenters addressing the Automatic Number Identification "ANI" provision in the proposed rule were TTA, the ACLU of Texas, OPUC, and AT&T. Sprint and SWBT commented on reply. TTA stated that the rule should target all services that pass ANI, not just 800 services, and that the IXCs (and any other telecommunications carrier that passes ANI) should be required to provide the same kind of billing insert. Additionally they suggested that the billing insert language be changed to read "your telephone number may be passed by your long distance company to the company you have called." SWBT concurs in reply with TTA on the IXC requirement for billing inserts. The ACLU of Texas stated that the ANI should be blocked because it serves as a "key to unlock databases of information." However, Sprint argued in reply that businesses use ANI to improve efficiency of business operations, not because they have a privacy interest in seeing the number before they answer the phone, and further, that the ANI does not carry with it any data at all. Sprint stated that "under no circumstances, (does the ANI) unlock data that is not otherwise already in the possession of the receiving party." OPUC commented that the ANI should be restricted to billing and collections or for the commission to consider on-line warnings to subscribers alerting them to the transfer of their telephone number to 800 customers. However, SWBT argues in reply that on-line warnings would "frighten the calling party." AT&T suggested that the reference to ANI in subsection (e)(3)(B) be modified to state that "[a] local exchange carrier must provide ANI to interexchange carriers, where it has the technical capability,." Sprint concurs with AT&T on reply. The commission agrees with TTA's suggestion regarding expanding the scope of the notice to include 900 numbers and the rule has been revised to reflect the change. However, the commission rejects TTA's

suggested language changes with respect to long distance carriers as a LEC could technically transmit the ANI (or other calling number identification) on intraLATA 800 calls with the implementation of SS7 technology. Further, the notice is clear in its purpose of notify the caller that the telephone number may be available to the 800 customer regardless of how it is carried. The commission cannot require the IXCs to provide billing inserts due to the commission's limited jurisdiction over IXCs. Similarly, while the commission understands the concerns of the ACLU of Texas, the commission has limited jurisdiction in restricting the IXCs' use of the ANI, and moreover, cannot order the LECs to block transmission of the ANI to the IXCs because the law (Modified Final Judgement) requires such transmissions for billing purposes. The commission does not find that on-line warnings would be in the public interest as consumers may find such warnings confusing and alarming. The purpose of the provision is to inform the consumer of the possible transmission of his telephone number to 800 or 900 customers and, thereby, afford such consumer the opportunity to make an informed decision before placing the call. The commission finds that written notification accomplishes this goal sufficiently

The most extensive comments on the rule were regarding the CPNI provisions. GTE-SW repeatedly stated that the proposed rule is not a privacy rule, but rather deals inappropriately with anti-competitive concerns. GTE-SW stated that the rule is inappropriate because they do not use CPNI to market supplemental services, but rather use other outside data readily available from a variety of sources. SWBT included with their comments a variety of articles emphasizing the availability of personal information from sources other than local exchange carriers. TTA commented that "LECs purchase consumer demographic and target market informations from the same sources that competitors use." However, the commission finds that the rule appropriately addresses

the dispensation of customer-specific information by requiring customer authorization before the LEC can release such information to third parties or use the information themselves to market supplemental services. Further, since the LECs claim that they do not use CPNI for marketing purposes, they should have no concerns with a rule that restricts such activity. The commission agrees that the privacy rule does address anti-competitive concerns, but that it does so justifiably in order to ensure that such information that is authorized for release is done so in a fair and reasonable manner so as to encourage competition and the development of an economically efficient and technologically advanced telecommunications infrastructure.

TTA, GTE-SW, SWBT, and United, all commented that the Computer III remand proceeding which produced FCC order, CC Docket No. 90-623 (November 21, 1991), preempted the proposed privacy rule's prior authorization provision. The FCC's prior order had required the BOCs to obtain prior authorization only from multiline business customers before releasing CPNI to third parties, but the BOCs reserved the right to use such information themselves. In the remand proceeding, the FCC determined that there were competitive advantages afforded the BOCs by virtue of not being required to obtain prior authorization on these customers ("this advantage is of particular importance with respect to large business customers, as their CPNI is most likely to be of competitive value, due to the volume and nature of business involved.") Therefore, the FCC changed their decision to require the BOCs to obtain prior authorization, from customers with 20 lines or more, before using or releasing CPNI. In the order issued on the remand proceeding, the FCC stated there was a "practical impossibility of complying with state safeguards (requiring prior authorization from all customers) while simultaneously integrating interstate basic and enhanced services." Further, they stated that "[i]f prior authorization rule (sic) were applied to all customers, only the